

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Tony S. Kaushal

Art Unit: 1794

Serial No.: 09/892,212

Examiner: Timothy M. Speer

Filed: 06/25/2001

Confirmation No.: 1445

Title: EROSION-RESISTANT COMPONENTS FOR PLASMA PROCESS CHAMBERS

VIA EFS-WEB
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Certificate of Electronic Transmission
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I hereby certify that 10/638,920/ this correspondence and any document referenced herein are being electronically filed with the USPTO via EFS-Web on December 2, 2009.

Marjorie Scariati
(Printed Name of Person Sending Correspondence)

/Marjorie Scariati/
(Signature)

**APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST
FOR RECONSIDERATION UNDER 37 CFR § 1.705(b)**

Sir:

This is a request for reconsideration of the patent term adjustment of 0 days indicated in the determination of Patent Term Adjustment under 35 U.S.C. § 154(b) that was attached to the Notice of Allowance mailed on September 2, 2009 for the above-referenced patent application. It is respectfully requested that Applicants be granted a minimum patent term adjustment of 2,302 days, which may be extended or reduced based on the actual date of issuance of a patent for the above-referenced application.

The issue fee is being paid concurrently herewith.

Applicants submit herewith a "Statement Under 37 CFR §1.705(b)(2)." In accordance with 37 CFR §1.705(b)(1), please charge the fee set forth in 37 CFR §1.18(c) (\$200.00) to Deposit Account No. 50-1047. Any other fees deemed to be due or credit for any overpayment should be directed to Deposit Account Number 50-1047 and authorization is hereby given to charge such account.

USSN: 09/892,212
Group Art Unit: 1794

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Respectfully submitted,
/David B. Bonham/

David B. Bonham
Registration No. 34,297

Date: December 2, 2009

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STATEMENT UNDER 37 CFR § 1.705(b)(2)

Sir:

This statement is respectfully submitted in support of the "Application for Patent Term Adjustment Including Request for Reconsideration Under 37 CFR § 1.705(b)" for the above-referenced patent application. In view of the following, it is respectfully requested that Applicants be granted a minimum patent term adjustment of 2,302 days, which may be extended or reduced based on the actual date of issuance of a patent from the above-referenced application.

The patent term adjustment on the Determination of Patent Term Adjustment Under 35 U.S.C. § 154(b) ("PTAS Sheet") that was attached to the Notice of Allowance and which is submitted herewith as Exhibit A is 0 days. That determination projected that the patent would issue on the Tuesday before the date that is 28 weeks after the September 2, 2009 mailing date of that notice (i.e., March 16, 2010). A copy of the Office's calculation for the 0 days, printed from PAIR, is submitted herewith as Exhibit B.

This determination of 0 days is in error in that, pursuant to 35 U.S.C. §154(b), the Office failed to take certain action within the time frame specified in 37 CFR § 1.702(a) and failed to issue a patent within three years of the actual filing date of the above-referenced application in accordance with 37 CFR §1.702(b). See *Wyeth v. Dudas*, 88 U.S.Q.P. 2d 1538 (D.D.C. 2008). Applicants assert that pursuant to the decision in *Wyeth*

v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008), a PTO delay under 35 U.S.C. 154(b)(1)(A) overlaps with a delay under 35 U.S.C. 154(b)(1)(B) only if the delays occur on the same day.

The following is a statement of the facts involved specifying the correct patent term adjustment and the basis for the adjustment under 37 CFR § 1.702, including the relevant dates as specified in 37 CFR § 1.703(a)-(e) for which adjustment is sought, and the adjustment as specified in 37 CFR § 1.703(f) to which the patent is entitled, and any circumstances during the prosecution of the application resulting in the patent that constitutes a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 CFR § 1.704. Also, the application is not subject to a terminal disclaimer.

A. 14 Month Delay under 37 CFR §§ 1.702(a) and 1.703(a)

Pursuant to 37 CFR §1.702(a)(1) and 1.703(a)(1), Applicants are entitled to a period of patent term adjustment due to the failure by the Office to mail an action under 35 U.S.C. §132 not later than 14 months after the actual filing date (i.e., June 25, 2001) (hereinafter "14 Month Delay"). Applicants agree with the Office's calculation shown in Exhibit B that the 14 Month Delay is 523 days. Because the Office failed to mail an action under 35 U.S.C. §132 until January 30, 2004, Applicants are entitled to a period of patent term adjustment beginning on the day after the date that is 14 months after the date on which the above-referenced application was filed under 35 U.S.C. § 111(a), i.e., June 26, 2001, and ending on the date of mailing of an action under 35 U.S.C. § 132, i.e., January 30, 2004. Accordingly, the period of patent term adjustment due to the 14 Month Delay by the Office is **523** days.

B. 3 Year Delay under 37 CFR §§ 1.702(b) and 1.703(b)

The patentees are entitled to a period of patent term adjustment pursuant to 37 C.F.R. §§ 1.702(b) and 1.703(b) due to examination delay from the number of days in the period beginning on the day after the date that is three years after June 25, 2001, when the above-referenced application was filed under 35 U.S.C. § 111(a) (i.e., June 26, 2004)

and ending on the date a patent is issued, not including several categories of exceptions stated in 35 U.S.C. § 154(b)(1)(B)(i)-(iii) ("3-Year Delay"). The patentees disagree with the Office's calculation shown in Exhibit A that the 3-Year Delay is 0 days (net of overlap; see *infra*); instead, the correct 3-Year Delay is **2089** days.

A patent is projected by the USPTO to issue on Tuesday, March 16, 2010, but may issue earlier or later, depending on the circumstances of publication. Assuming that a patent is issued on the projected issue date as indicated by the USPTO (i.e., March 16, 2010), said issue date would be 8 years and 264 (or 3184 days) after the date on which the above-referenced application was filed under 35 U.S.C. § 111(a), which, after accounting for the initial 3-year period, entitles the Applicant to Patent Term Adjustment of 5 years and 264 days, which is equivalent to **2089** days.

C. Exclusion of Overlapping Delay under 37 C.F.R. § 1.703(f)

Applicants are not entitled to a period of patent term adjustment to the extent that the periods in 37 CFR §1.702 (4 Month Delay) overlap pursuant to 37 CFR §1.703(f) ("Overlapping Delay"). The Office calculated **0** days of Overlapping Delay (Exhibit B). Applicants agree with the Office's calculation.

D. Exclusion of Delay Due to Abandonment under 37 C.F.R. §1.704(c)(3)

Per 37 C.F.R. §1.704(c)(3), Applicants are not entitled to a period of patent term adjustment for the number of days beginning on the date of abandonment (i.e. 2/15/2005, per Exhibit B) and the earlier of:

(i) The date of mailing of the decision reviving the application or accepting late payment of the issue fee (i.e. 11/30/2006, per Exhibit B); or

(ii) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed (i.e. 9/23/2005, per Exhibit B). Per 37 C.F.R. §1.704(c)(3), the earlier of the above dates is 9/23/2005, therefore, a

reduction of patent term adjustment from 2/15/2005 – 9/23/2005, i.e. **220** days, is appropriate.

E. Exclusion of Delay Due to Abandonment under 37 C.F.R. §1.704(c)(4)

Per 37 C.F.R. §1.704(c)(4), Applicants failure to file a petition to withdraw the holding of abandonment or to revive an application within two months from the mailing date of a notice of abandonment (i.e. by 4/23/2005, per Exhibit B), will reduce the period of Patent Term Adjustment set forth in §1.703, calculated as beginning on the day after the date two months from the mailing date of a notice of abandonment (i.e. 4/24/2005) and ending on the date a petition to withdraw the holding of abandonment or to revive the application was filed (i.e. 5/23/2005, per Exhibit B). Per 37 C.F.R. §1.704(c)(4), a reduction of Patent Term Adjustment for the period 4/24/2005-5/23/2005, i.e. **29** days, is appropriate.

F. Exclusion of Delay Due to Applicants Efforts

Per 37 C.F.R. 1.704(b), Applicants failure to engage in reasonable efforts to conclude processing or examination of an application will reduce period of Patent Term Adjustment set forth in §1.703 for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed (i.e. 10/25/2007 – 3 months after the 7/25/2007 date the 1st Office Action was re-mailed after having been mailed, but never received by the Applicant, on 1/30/2004), in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request (i.e. 10/26/2007, per Exhibit B) and ending on the date the reply was filed (i.e. 12/26/2007, per Exhibit B). Per 37 CFR 1.704(b), a reduction of Patent Term Adjustment for the period 10/26/2007-12/26/2007, i.e. **61** days, is appropriate.

G. Total Patent Term Adjustment

In accordance with the decision in *Wyeth v. Dudas*, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008), a PTO delay under 35 U.S.C. 154(b)(1)(A) overlaps with a delay under 35 U.S.C. 154(b)(1)(B) only if the delays occur on the same day. Thus, pursuant to 37 CFR §1.703(f), the total patent term adjustment is 523 days of 14 Month Delay, plus 2089 days of 3 Years Delay, minus 0 days of Overlapping Delay, minus 249 days of Applicants' Delay (220 days, plus 29 days, plus 61 days), for a total net Patent Term Adjustment of 2,302 days. Applicants further submit that the term of 2,302 days may be extended or reduced based on the actual date of issuance of a patent for the above-referenced application.

H. Conclusion

In view of the foregoing, it is respectfully requested that this Application for Patent Term Adjustment be favorably considered and that a corrected Determination of Patent Term Adjustment be issued to reflect a patent term adjustment of 2,302 days, which may be extended or reduced based on the actual date of issuance of a patent for the above-referenced application.

Respectfully submitted,

/David B. Bonham/

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Date: December 2, 2009



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/092,212	06/25/2001	Tony S. Karahal	005211	1445
30588	7590	00932/0000	ALTERNATIVE	
EXAMINER				
SUPERVISOR				
ART UNIT		PAPER NUMBER		
1794				

DATE MAILED: 09/02/2009

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 0 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 0 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.



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09862.212

EROSION-RESISTANT COMPONENTS FOR PLASMA PROCESS CHAMBERS

Select New Case	Application Date	Transaction History	Image File Wrapper	Patent Term Adjustments	Continuity Data	Prioritized Documents	Address & Assign Agents	Utility References
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Patent Term Adjustment

Filing or 371(c) Date:	06-25-2001	USPTO Delay (PTO) Delay (days):	523
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	1154
Post-Issue Petitions (days):	+0	Total Patent Term Adjustment (days):	0
USPTO Adjustment (days):	+0	Continuation of Calculation	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
09-02-2009	Mail Notice of Allowance		
08-31-2009	Document Verification		
08-31-2009	Notice of Allowance Data Verification Completed		
08-25-2009	Date Forwarded to Examiner		
08-24-2009	Amendment after Final Rejection		
06-23-2009	Mail Final Rejection (PTOL - 326)		
06-22-2009	Final Rejection		
04-16-2009	Date Forwarded to Examiner		
04-07-2009	Response after Non-Final Action		
01-07-2009	Mail Non-Final Rejection		
01-05-2009	Non-Final Rejection		
10-21-2008	Date Forwarded to Examiner		
10-21-2008	Withdrawal of Notice of Allowance		
10-17-2008	Dispatch to FDC		
09-19-2008	Withdrawal Patent Case from Issue		
09-17-2008	Issue Notification Mailed		
10-07-2008	Patent Issue Date Used in PTA Calculation		
08-25-2008	Dispatch to FDC		
08-25-2008	Application Is Considered Ready for Issue		
08-22-2008	Issue Fee Payment Verified		
08-22-2008	Issue Fee Payment Received		
06-04-2008	Mail Notice of Allowance		
06-03-2008	Notice of Allowance Data Verification Completed		
06-03-2008	Case Docketed to Examiner in GAU		
05-30-2008	Document Verification		
05-13-2008	Date Forwarded to Examiner		
04-23-2008	Response after Non-Final Action		
02-27-2008	Case Docketed to Examiner in GAU		
01-23-2008	Mail Non-Final Rejection		
01-22-2008	Non-Final Rejection		
01-10-2008	Date Forwarded to Examiner		
12-26-2007	Response after Non-Final Action		1154
12-26-2007	Request for Extension of Time - Granted		*
10-04-2007	Case Docketed to Examiner in GAU		*
07-25-2007	Mail Notice of Restarted Response Period		*
07-23-2007	Letter Restarting Period for Response (i.e. Letter re: References)		*
07-10-2007	Case Docketed to Examiner in GAU		*

01-05-2007	Case Docketed to Examiner in GAU	◆
01-08-2007	Mail Notice of Rescinded Abandonment	◆
01-05-2007	Notice of Rescinded Abandonment in TCs	◆
11-30-2006	Mail-Petition to Revive Application - Granted	◆
05-23-2005	Petition Entered	◆
02-23-2005	Mail Abandonment for Failure to Respond to Office Action	◆
02-15-2005	Abandonment for Failure to Respond to Office Action	◆
07-28-2004	Mail Non-Final Rejection	◆
07-26-2004	Non-Final Rejection	
05-18-2004	Date Forwarded to Examiner	
04-30-2004	Response after Non-Final Action	
04-30-2004	Workflow Incoming amendment IFW	
01-30-2004	Mail Non-Final Rejection	523
01-26-2004	Non-Final Rejection	◆
01-20-2004	IFW TSS Processing by Tech Center Complete	◆
01-20-2004	Case Docketed to Examiner in GAU	◆
12-09-2002	Reference capture on IDS	◆
06-25-2001	Reference capture on IDS	◆
10-08-2003	Information Disclosure Statement (IDS) Filed	◆
10-08-2003	Information Disclosure Statement (IDS) Filed	◆
12-09-2002	Information Disclosure Statement (IDS) Filed	◆
12-09-2002	Information Disclosure Statement (IDS) Filed	◆
06-25-2001	Information Disclosure Statement (IDS) Filed	◆
06-25-2001	Information Disclosure Statement (IDS) Filed	◆
01-08-2004	Transfer Inquiry to GAU	◆
11-13-2003	Application Is Now Complete	◆
11-12-2003	Application Dispatched from OIPE	◆
11-12-2003	Application Is Now Complete	◆
10-01-2003	Additional Application Filing Fees	◆
10-01-2001	Small Entry Statement (37 CFR 1.27)	◆
08-15-2001	Pre-Exam Office Action Withdrawn	◆
08-15-2001	Notice Mailed--Application Incomplete--Filing Date Assigned	◆
08-15-2001	Correspondence Address Change	◆
07-06-2001	IFW Scan & PACR Auto Security Review	◆
06-25-2001	Initial Exam Team nm	◆

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